

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Victor L. Williams,

Civil No. 05-2947 (PAM/FLN)

Plaintiff,

v.

**ORDER**

Midwest Readers and Anthony  
Moulder,

Defendants.

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This matter is before the Court on Plaintiff Victor Williams's Motion to Vacate the Order of Dismissal. The Court denies the Motion.

Plaintiff filed this action on December 21, 2005. Because Plaintiff was granted in forma pauperis status, the Clerk's Office sent him marshal service forms, but Plaintiff never completed the forms. On April 28, 2006, Magistrate Judge Franklin L. Noel ordered Plaintiff to notify defense counsel to enter an appearance, to move for default, or to advise the Court in writing if other action was required. Magistrate Judge Noel notified Plaintiff that his case would be dismissed for lack of prosecution if he did not respond within twenty days from the date of the order. Plaintiff did not respond. This Court dismissed the case without prejudice for lack of prosecution on June 15, 2006, but permitted Plaintiff until June 25, 2006, to move to vacate the Order of Dismissal. Plaintiff failed to seek relief by this date.

On July 28, 2006, Plaintiff filed the instant Motion. He explains that he traveled to Indiana in April 2006 to be with his sick child, and he asked his sister to collect his mail while he was gone. However, his sister purportedly ceased contact with him at the end of April 2006.

When Plaintiff returned home at the end of June, he learned he had been evicted and all of his belongings had been removed from his residence. According to Plaintiff, his sister ceased contact pursuant to terms of a settlement she had reached with Defendants in a separate case.

Despite Plaintiff's recitation of unfortunate events, the Court will not vacate the Order of Dismissal. Plaintiff's family situation in April 2006 does not excuse his failure to complete the marshal service forms or serve Defendants on his own within the time mandated by Federal Rule of Civil Procedure 4(m). In addition, Plaintiff's written explanation cannot be reconciled with his prior actions and communications with the Court. Although he claims he returned to Minnesota at the end of June, he did not contact the Court until a month later, on July 24, 2006. Plaintiff's assertion that his sister was precluded from sending him mail is not credible, and even if true, he should have made other arrangements for his mail when she ceased contact in April 2006. Notably, none of the Court's mailings were returned as undeliverable, including the Order of Dismissal dated June 15, 2006. Finally, Plaintiff never contacted the Court to provide a new address, nor did he arrange to have his mail forwarded to his Indiana address. Indeed, since the time he filed his Complaint in December 2005 until he filed the instant Motion, it is fair to say that Plaintiff has entirely abandoned his case. Plaintiff's reasons to vacate the dismissal are unavailing.

Plaintiff's pattern of delay appropriately resulted in dismissal of his case. See Hutchins v. A.G. Edwards & Sons, Inc., 116 F.3d 1256, 1260 (8th Cir. 1997); see also Givens v. A.H. Robins Co., 751 F.2d 261, 263 (8th Cir. 1984) (dismissal appropriate where a plaintiff continuously and persistently fails to prosecute his case) (citation omitted). Moreover,

despite Plaintiff's consistent failure to prosecute his case, the dismissal was without prejudice, which means that Plaintiff is not prohibited from filing a new case. Accordingly, based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Vacate the Order of Dismissal (Docket No. 9) is **DENIED**.

Dated: August 9, 2006

s/ Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge